

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 3:14-cr-023

Also 3:20-cv-181

- vs -

District Judge Thomas M. Rose

Magistrate Judge Michael R. Merz

DEMIAN PINA,

Defendant.

:

**REPORT AND RECOMMENDATIONS ON MOTION FOR
CERTIFICATE OF APPEALABILITY**

This criminal case is before the Court on Defendant's Motion for a Certificate of Appealability (ECF No. 163). In one sense, this Motion is moot because the Court already denied a certificate of appealability in the final judgment (ECF No. 159, 160). However because Defendant will probably seek a certificate from the Sixth Circuit if he appeals, the Magistrate Judge believes it is appropriate to clarify a misstatement of fact in the Motion.

The Court dismissed Pina's § 2255 motion upon finding that it was untimely filed. *Id.* The Magistrate Judge's Report, which Judge Rose adopted in the absence of any objections, found that the Supreme Court of the United States denied review on certiorari on March 5, 2019, and that the § 2255 Motion, not filed until May 2020, was therefore barred by the statute of limitations. In his instant Motion, Pina claims the Supreme Court denied certiorari on June 4, 2019 (ECF No. 163,

PageID 169). That claim is flatly contradicted by the record: a copy of the Supreme Court's Order denying certiorari is on file with this Court, bearing that Court's date stamp of March 5, 2019 (ECF No. 145). Pina offers no proof of the later date and his claim is disproved by the record.

Therefore, a certificate of appealability should be denied.

August 10, 2020.

s/ Michael R. Merz
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Because this document is being served by mail, three days are added under Fed.R.Civ.P. 6. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal.